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## **ALRB PUBLIC MEETING LITIGATION REPORT**

DATE: February 9, 2021  
TO: Agricultural Labor Relations Board  
FROM: Todd M. Ratshin, Chief Board Counsel

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This report discusses updates and developments that have occurred in litigation matters involving the Board since its December 8, 2020 meeting.

### **Petitions for Writ of Review of Unfair Labor Practice Decisions**

#### California Appellate Courts

► ***Smith Packing, Inc. v. ALRB*, Second District Court of Appeal, [Case No. B308102](#)**

**Summary:** Petition for writ of review of the Board's decision in 46 ALRB No. 3, in which the Board found the employer unlawfully terminated a group of employees for engaging in concerted protected activity.

**Status:** Smith Packing filed its opening brief on January 14, 2021. The Board's respondent's brief is due February 18.

► ***California Artichoke and Vegetable Corp. dba Ocean Mist Farms v. ALRB*, Sixth District Court of Appeal, [Case No. H048797](#)**

**Summary:** Petition for writ of review of the Board's decision in 46 ALRB No. 5, in which the Board found the employer unlawfully suspended a group of employees for engaging in protected concerted activity.

**Status:** Ocean Mist Farms filed its petition for writ of review on January 28, 2021. On January 29, the court issued a letter directing the Board to file the certified record within 10 days. On February 3, the Board submitted an application for a 30-day extension of time to file the certified record, which the court granted in an order issued February 9. The certified record now is due March 10. Petitioner's opening brief will be due 35 days after the certified record is filed.

## **Other Board Litigation**

### **United States Supreme Court**

#### **► *Cedar Point Nursery and Fowler Packing Co., Inc. v. Hassid, et al.*, U.S. Supreme Court, [Case No. 20-107](#)**

**Summary:** The growers seek review of the Ninth Circuit’s opinion rejecting their argument the Board’s access regulation (Cal. Code Regs., tit. 8, § 20900) violates the Fifth Amendment’s Takings Clause. (*Cedar Point Nursery v. Shiroma* (9th Cir. 2019) 923 F.3d 524; see also *Cedar Point Nursery v. Shiroma* (9th Cir. 2020) 956 F.3d 1152 [order denying petition for rehearing en banc].)

**Status:** On December 28, 2020, the growers filed a motion to extend the deadline to file their opening brief by three days, which the Court granted. The growers filed their opening brief on the merits on December 31. Amicus briefs in support of petitioners were filed by: Pelican Institute for Public Policy (Dec. 30); The Cato Institute (Dec. 31); Americans for Prosperity Foundation (Jan. 5, 2021); California Farm Bureau Federation (Jan. 6); Western Growers Association, et al. (Jan. 6); New England Legal Foundation (Jan. 6); Mountain States Legal Foundation (Jan. 6); Institute for Justice (Jan. 7); Chamber of Commerce of the United States of America (Jan. 7); United States (Jan. 7); The Buckeye Institute (Jan. 7); State of Oklahoma, et al. (Jan. 7); American Farm Bureau Federation (Jan. 7); Center for Constitutional Jurisprudence (Jan. 7); and Liberty Justice Center (Jan. 7). On January 7, the National Association of Counties, et al. filed an amici curiae brief in support of neither party. On January 21 the Board filed a motion to extend its opposition brief due date to February 5, which the Court granted. The Board filed its opposition brief on February 5. Amicus briefs in support of the Board are due February 12. Petitioners’ reply brief is due March 8. The case is scheduled for oral argument on March 22.